IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5573 OF 1996

M/s.Bhailal Jadavji Sheth .. Petitioner

Versus

The State of Maharashtra .. Respondents

Mr..G.R.Rege with Ms.Shakuntala Mudbidri for petitioners

Mr.C.R.Sonawane, A.G.P. for respondent Nos. 1 to 4.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 26TH OCTOBER 2004.

P.C.

1. This is a petition under Article 226 of the Constitution of India. Petitioner challenges an order dated 31st April 1996 passed by respondent No.1 and an order dated 7th October

1996 passed by Divisional Commissioner (Supplies) Pune. The matter has a chequered history.

2. M/s.Bhailal Jadhavji Sheth is a partnership firm duly registered under Indian Partnership Act, 1932. This firm is carrying on wholesale business in Kerosene. The firm claims to be the agent of Bharat Petroleum for light diesel oil and other petroleum products.

3. In the year 1988 petitioner applied to respondents for grant of necessary licence to carry on business of supply of kerosene as rationed article. Licence No.9 of 1989 was granted to the petitioner. It appears that the premises were raided sometime in 1989. It was alleged that during such aid it was discovered that kerosene meant for sale to consumers was mixed with some other substance and sold as light diesel oil. Hence, quality of kerosene has been adversely affected. A show cause notice was issued to the petitioner on 18th December 1989 seeking explanation as to why licence should not be cancelled. A reply was given to this show cause notice by the petitioner and it denied all

the allegations. However, respondents were not satisfied with this explanation and cancelled petitioner's licence No.9 of 1989. The deposit was also confiscated. Petitioner preferred appeal No.11 of 1990 before the Additional Commissioner, Pune Division. On 21st June 1990 this appeal was dismissed.

4. It appears that aggrieved by this order revision application was preferred by petitioner before the Minister, Food and Civil Supplies, State of Maharashtra. The revision application was kept pending. No orders were passed on the stay application. Aggrieved by the order refusing stay pending disposal of the revision application, a writ petition being W.P. No.883 of 1990 was filed in this Court by petitioner. This court after hearing both sides stayed the order of the Additional Commissioner and directed that the same will remain effective till the hearing and final disposal of the revision application. The revision application was not disposed of for five years.

5. In the meanwhile, respondents filed

criminal case No.5 of 1990 under provisions of Essential Commodities Act against the petitioner for alleged contravention of terms of licence. It appears that Magistrate dismissed this complaint. Petitioner was acquitted of all the charges. The order to this effect was passed on 28th August 1995.

6. Before the disposal of the criminal complaint, sometime in 1993, place of business from where petitioner was operating licence No.9 of 1989, was acquired by State Government for the Railways. Therefore, petitioner surrendered the licence being Licence No.9 of 1989. After making arrangements petitioner shifted the business at Gokul Shirgaon near Kolhapur.

7. On 14th September 1993 petitioner applied for issuance of fresh licence for the same business i.e. sale of Kerosene as rationed article. The application for issuance of fresh licence was made on 14th Septemebr 1993. Column No.9 of the application which has been left blank reads thus:-

> "9. *Whether the applicant has been convicted in a court of law or found guilty in any departmental inquiry regarding any breach of this order or any other control order; if so, give details."*

8. The entire controversy centres around this item. However, the application was considered favourably and after scrutiny, petitioner was ganted fresh licence by authorities being Licence No.10 of 1994. This licence is in force till date.

9. It appears that earlier revision application (filed in 1990 in respect of licence No.9 of 1989) was placed before the Minister for hearing. Although, it was pointed out that this licence is surrendered, petitioner was informed that he should not carry on business and his deposit is forfeited. Thereafter, a show cause notice was issued on 22nd July 1996 seeking petitioner’s explanation in respect of the allegation that proper information was not

supplied by him while applying for fresh licence. Petitioner replied to this show cause notice and pointed out that criminal case has ended in honourable acquittal and the order staying cancellation of earlier licence being in force, there is no suppression or concealment of any facts.

10. It appears that respondents were not satisfied with this explanation and proceeded to cancel petitioners' fresh lience (10 of 1994) vide order dated 31st July 1996. Petitioner challenged this action by instituting Writ Petition No.4430 of 1996 in this Court. By an order dated 24th September 1996, petition was allowed to be withdrawn with permission to file Appeal before respondent No.4 for challenging the cancellation. All contentions were expressly kept open by this Court. Petitioner filed an appeal which was placed for hearing and final disposal before respondent No.4 and by the impugned order the said appeal has been dismissed. This is how, petitioner is before this court on third occasion invoking under Article 226 of the Constitution.

11. Mr.Rege, learned Counsel appearing for petitioner submits that the auhorities have erred in cancelling the fresh licence. Petitioner has not suppressed any fact much less vital and relevant material while obtaining fresh licence. He submits that the authorities have misread and misconstrued clause No.9 of the application form. That clause obliges applicant to disclose about conviction by a court of law or proceedings regarding breach of control order by the department concerned. He submits that on the date of application of licence, neither the petitioner was convicted by criminal court nor any proceedings were pending against him for breach or violation of a control order. He submits that earlier licence having been surrendered and even the premises having been handed over to railways, there was no question of petitioner being guilty of any breach or departmental proceedings being pending against him. In any event, he submits that the cancellation poceedings in respect of earlier licence no longer survive upon its surrender. That apart, there was a stay order in

petitioner's favour in the revisonal proceedings. Therefore, it could not be said that petitioner obtained fresh lience by suppressing any material or relevant fact or by mis-representation and misleading authorities. He, therefore, submits that there was no warrant for issuing show cause notice for cancellation of petitioner's licence. For all these reasons, he submits that instant petition be allowed and the orders impugned by the petitioner be quashed and set aside.

12. Mr.Sonawane, learned A.G.P. on the other hand submits that the Appellate Authority was right in the conclusion that it has reached. He submits that while applying for the licence, petitioner did not point out the fact that on earlier occasion licence was issued in his favour but the same has been cancelled and the order of cancellation was upheld all through out. He submits that authorities in charge of grant of licence for supply of essential commodities are empowered to insist upon all information being supplied to them by the applicants in Public Interest. Ultimately, a licence for supply for essential commodities is being issued. The

applicant must be a person against whom no proceedings much less serious proceedings in criminal court or at departmental level be pending. If applicants are earlier convicted or have been held guilty for breach of provisions of control order, then their past conduct has to be considered while granting them fresh lience. He, therefore, submits that the authorities cannot be faulted in the conclusion that they have reached and the order neither suffers from any error apparent nor the same is perverse so as to call for interference in extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Consequently, petition is liable to be dismissed.

13. With the assistance of learned Counsel we have perused the show cause notice dated 22nd July 1996 and the reply of the petitioner thereto. We have also perused the orders impugned in this petition. We have also been taken through the earlier proceedings and the relevant clause of the application form. In our view, the proceedings initiated for cancellation of fresh licence were thoroughly misconceived and

untenable. The Tahsildar has observed in his order that petitioner applied for fresh licence on 15th September 1993. When he applied for fresh licence he had already shifted his premises to Gokul Shirgaon. It is clear from the impugned orders that Gokul Shirgaon falls in the jurisdiction of Tahsildar Karveer and the said Tahsildar granted the licence being licence No.10 of 1993 in favour of the petitioner for one year. That period was to come to an end on 31st December 1993. This licence No.10 of 1993 was renewed till 31st December 1997.

14. We are unable to appreciate as to how mere filing of a criminal case against the petitioner disentitles him from applying for fresh licence. Learned A.G.P. was unable to point out either from the Essential Commodities Act or relevant Control Order or any other Rules, notification a provision of disclosure of mere pendency of a criminal case. The criminal case ended in an acquittal is clear from record. Reliance placed on the order of the revisional authority pertaining to earlier licence is also misplaced. That order does not in any manner

indicate that proceedings were pending for breach of provisions of control order. The authorities have overlooked the fact that petitioner had surrendered the earlier licence and shifted his place of business. After surrender of earlier licence being 9 of 1989, there is no question of any proceedings being pending against the petitioner. Petitioner in these facts and circumstances cannot be held guilty of suppressing vital and relevant facts. Therefore, the petitioner has not suppressed any fact relevant to the application nor has he violated the mandate of clause No.9 of the application form.

15. Considering phraseology of clause No.9, in our view, petitioner cannot be said to be guilty of having suppressed any fact relevant to the application for grant of fresh licence. It appears to us that the show cause notice is an after thought on the part of authorities and there is substance in the complaint of Shri Rege that the petitioner has been harrassed time and again.

16. The Appellate Authority ought to have, in these facts and circumstances, interfere and reversed the order of Tahsildar. However, the Appellate Authority instead of performing its duty has unnecessarily accused the petitioner of suppression of vital and relevant facts and misleading the authorities with a view to obtain fresh licence. The Appellate Authority instead of considering the matter in its proper perspective and in the light of the events that have led to issuance of fresh licence unnecessarily questioned the grant of the same. In the peculiar facts and circumstances of this case, petitioner cannot be held to be guilty of violating the term in the application for licence. As pointed out above, the earlier licence having been surrendered and fresh licence being granted as also renewed at a belated stage, proceedings for its cancellation could not have been initiated. Consequently, the show cause notice itself was misconceived and untenable. All orders in pursuance of such a show cause notice therefore, suffer from an ex facie error and are otherwise vitiated. Petitioner’s explanation being reasonable and bonafide, in the

peculiar facts and circumstances, ought to have been accepted and the show cause notice dropped. Instead, authorities went ahead and cancelled even the fresh licence, thereby depriving licencee of the source of livelihood. This Court has while admitting this petition granted interim reliefs in terms of prayer clause (cc), thereby staying the implementation and execution of impugned orders. There is no affidavit filed in reply. learned A.G.P.

17. In our view, the petitioner having established that the proceedings as well as the impugned orders were wholly unsustainable, it is entitled to succeed.

18. In the result, Rule is made absolute in terms of prayer clause (b). However, in the circumstances of this case, there will be no order as to costs.

19. We expressly clarify that this order does not in any manner prevent the authorities from initiating proceedings against the petitioner if it is satisfied that it is guilty of breach of

the terms and conditions of the existing licence or the provisions of the Act or the control orders issued thereunder.

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